

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held January 20, 2004

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, January 20, 2004, in the former Public Library space, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Robert Bronnes
Bruce E. Clark
Christopher Mitchell
Arthur J. Semetis
George Rowe, Jr. (Mr. Rowe departed at approximately 8:30 P.M.)

Mr. Lustenberger acted as Chairman and Mr. Mitchell as Secretary of the meeting.

There were two continuations on the agenda.

Continuations

2002-29 Ruth Nicodemus and C.M. Pateman & Associates - Mountain Road (Sheet 11; Lot P27K) Seeking a variance from Article XV (Resource Protection) of the Zoning Code to permit the construction of one single-family residence and an interpretation or variance from section 243-11A (yard requirements).

2003-27 James Lundy and Martha Chamberland - 31 East

Clinton Avenue (Sheet 14; Block 223; Lot 15 & 15A)
Seeking a variance from section 224-10 of the Zoning Code to permit a site capacity determination of two single family dwelling units.

Lundy

The Lundy matter was considered first. The applicants were represented by Richard T. Blancato, Esq., and by a representative of Cronin Engineering of Peekskill. The Chairman stated that there would be no determination at the current meeting, since an engineering report had just arrived. The representative of Cronin Engineering stated that their most important task was to identify the boundaries of the 100-year floodplain on and near the site, in order to quantify what specific variance might be requested from the deduction for site capacity. This task has become more difficult since the Federal Emergency Management Agency cannot locate the relevant topographic studies they formerly possessed.

Several neighbors were heard on this matter. Mr. Robert Munigle of East Clinton Avenue stated that the level of Downing Court, a road west of the proposed building site, was not lowered three feet after the 1970's, as had been stated by Cronin Engineering. Mr. Stanley Leyden of

121 South Broadway noted that he had had to install two sump pumps recently, suggesting an increased current danger of flooding. Ms. Lenore Munigle inquired whether, all else equal, two new structures would displace more water than one; the Village Engineer, who was present, replied that they would. It was agreed that, as part of their further studies, Cronin Engineering would be shown by Mr. Munigle how high the floodwaters reached in his yard and/or garage during Hurricane Floyd in 1999.

Nicodemus

The Chairman noted that the current meeting was to hear evidence about the proposed project's effect on the Irvington Reservoir, especially about mitigation of possible adverse impacts. He recounted the Zoning Board of Appeals' agreement with the Irvington Planning Board, that the former would consider the potential effects of the Nicodemus project on the Irvington watershed, while the latter would review aspects related to protection of wetlands. The Chairman declined to postpone this evening's consideration, contrary to suggestions in a letter of January 16, 2004 from Mark R. Rielly, Esq., on behalf of Jon Elwyn and Heidi Jellinghaus, neighbors to the site. After an exchange on this subject with Messrs. Elwyn and

Rielly, the Zoning Board proceeded with its planned consideration.

The proponents were represented by Richard T. Blancato, Esq., and presentations were heard from Timothy L. Cronin III, P.E., of Cronin Engineering, and from Stephen W. Coleman, environmental consultant. Citing a "Stormwater Management Study" prepared by his firm and dated January 9, 2004, Mr. Cronin stated that even in high-water conditions, flow over the site would not be greater following construction than is true at present. (Indeed the study in question states, in Table 1 on page 6, that peak flows would be reduced slightly, following construction.) Nor, Mr. Cronin added, would the flow's velocity towards the reservoir be increased due to channeling through the 36-inch pipe that is planned on the southeastern segment of the site.

The Village Engineer observed that since the peak water flow over the site is slated to decline, another aspect of the water's progress would change: the level of retained water. Following construction, an additional one-half inch is calculated to be held in the area between Peter Bont Road and the planned residence. It is not

certain, the Village Engineer stated, whether that water will back up onto adjoining properties.

Mr. Coleman, an environmental consultant, stated that the plunge pool that is proposed near Peter Bont Road is intended to trap the "first flush" of rain, basically the first half-inch coming from the road surface. He asserted that environmental protection would also be afforded by the plans to build a pumped sewer line and dry wells on the site, the latter to trap roof runoff.

The applicants submitted further documents, including a "Reservoir Study" dated 1991 by John Dedyo, P.E., a signed appraisal of the property, and an analysis of soil samples from the fill present on the site. The soil analysis was conducted by Environmental Management Solutions of New York, Inc. (EMS/NY), and dated January 20, 2004. EMS/NY reported that the most abundant metals found in the sample were chromium, lead, nickel, and zinc; Mr. Charles Pateman asserted that the levels of these elements encountered were at notably low and, in practice, safe levels.

The Chairman observed that it was important to recall the Zoning Board's key charge in this matter: to avoid contamination of the Irvington Reservoir. The Zoning Board

should be satisfied on that point, he noted. The distance from the lot in question to the Reservoir is certainly relevant, but the burden of proof is on the applicant. In addition, the planned hydrological works require maintenance. Who will maintain the plunge pool, the sewer pump, the pipe under the house's front yard, etc.?, the Chairman asked. Applicants responded that the Village, through easements, would acquire responsibility for maintaining the plunge pool and other works near Peter Bont Road, while the eventual homeowner would maintain the sewer pump.

The Chairman asked whether the Village Engineer had comments at this point. Mr. Mastromonaco stated that applicants had responded with needed information on the matter of hydrology. At the same time, he took exception to one or two points, including his belief that Hermits Road will flood more after construction than at present. He stated that it did not matter precisely when the fill was placed on the site, and noted that he is not sure that the fill meets the standards of the New York State Department of Environmental Conservation. The Chairman observed that any clean-up of the fill would have to be a condition of a variance, not an element of the final site

plan. The applicants stated their view that Hermits Road would not flood more often following construction.

The Chairman stated his view that the Zoning Board now has sufficient evidence in the record to decide on whether the Reservoir will be adversely affected. However, he noted that Mr. Elwyn had not seen the most recent submissions, and that it was only procedurally proper to permit him and such experts as he might choose to examine them. At the Board's next meeting, Mr. Elwyn will have a chance to respond to the applicant's most recently-presented documents.

Some additional points were covered. Applicants stated, in an exchange with Mr. Clark, that only the fill was tested in the soil study just presented. Mr. Elwyn presented his view that the Zoning Board may well be gradually abandoning the resource-protection ordinance, and contended that impacts on the entire eco-system should be considered, not just effects on the Reservoir. He worried about possible oil spills or other domestic sources of contamination following construction, and doubted that the planned mitigating works would survive long. Mr. Blancato observed that Irvington's regulation with regard to building in the Reservoir watershed was too restrictive and

confiscatory. Mr. Charles Pateman, for the applicants, stated that they were requesting a front-yard variance, and withdrawing their request for an interpretation. A discussion of future meeting dates ensued.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.

Christopher Mitchell